

Remarks

With this Amendment, Claims 31-38, 40-46 and 48-52 remain pending in this application. Claims 39 and 47 have been cancelled.

The Applicant wishes to thank the Examiner for his time reviewing this application and providing his helpful comments to the Applicants' Attorney on September 9, 2003. As a result of the Examiner's comments, the claims have been amended to overcome previous rejections and are now believed to be in condition for allowance.

I. Rejections under 35 U.S.C. §112

In the Final Office Action dated August 20, 2003, the Examiner rejected claims 31-52 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter with the Applicant regards as the invention.

The Examiner stated that the phrase "soy protein" was indefinite because "the accepted meaning is directed to an isolated protein fraction, i.e., 'soy protein,' as stated", whereas the "term 'soy protein' is stated by the applicant (in the 5-19-03 response) to be used by the claims to 'comprise soy grits and soy flour'."

In the telephone communication with the Examiner on September 9, 2003, the Examiner indicated that amending the claims to define "soy protein" to comprise soy grits and soy flour would overcome the rejections under 35 U.S.C. §112.

Applicants have accordingly amended the claims to specifically recite that the soy protein comprises soy grits and soy flour, and have canceled claims 38 and 47. It is believed that these amendments overcome the rejection under this section, and favorable reconsideration of the amended claims and withdrawal of the rejections under this section are respectfully requested.

II. Rejections under 35 U.S.C. §102

In the Final Office Action dated August 20, 2003, the Examiner rejected claims 31-37 as being anticipated by Feucht (DE 3708622) under 35 U.S.C. §102(b).

In the telephone communication from the Examiner on September 9, 2003, the Examiner indicated that amending the claims to define "soy protein" to comprise soy grits and soy flour would overcome the rejections under 35 U.S.C. §102(b) because Feucht does not teach the use of soy flour.

The claims have, accordingly, been amended as such, and are now believed to overcome the rejection under 35 U.S.C. §102(b). Favorable reconsideration and withdrawal of the rejection under this section are respectfully requested.

III. Rejections under 35 U.S.C. §103

In the Final Office Action dated August 20, 2003, the Examiner maintained his rejection of claims 31-52 as being unpatentable over US Patent Number 4,109,018 (Thompson), GB 1,522,439 ('439) and Feucht under 35 U.S.C. §103(a).

The Examiner considered the Applicants' arguments, but deemed that the arguments were not persuasive for the same reasons, in part, as the rejections under 35 U.S.C. §112. Because the claims have been amended to overcome the rejections under §112, it is believed that this portion of the Examiner's rejections under §103(a) has been overcome.

In the previous Office Action dated December 19, 2002, the Examiner cited Thompson as the primary reference in the rejections of the claims under §103(a). Thompson is directed to a highly specialized diet bread formulation which requires the use of significant levels of alpha-cellulose flour and a hydrophilic gum, in addition to wheat gluten and a protein source, present in "rather narrow ranges". (Thompson at Col. 2, lines 61-67).

As stated in Applicants' Response dated May 19, 2003, Thompson itself states that "(d)epartures from the required ranges (of the four required ingredients) not only have marginal effects upon caloric values, but have serious deleterious effects on the edibility and acceptability of the bread." (Thompson at Col 2, line 67, to Column 3, line 2).

In other words, Thompson explicitly teaches against varying the levels of the four required ingredients. The ranges for these ingredients recited in Thompson are as follows:

Protein (preferably soy flour) 5-12 parts per 100 parts flour
Gluten 3-9 parts per 100 parts flour
Alpha-cellulose flour 10-20 parts per 100 parts flour
Hydrophilic gums 0.5-6 parts per 100 parts flour

Furthermore, according to Thompson, if "coarsening agents" such as toasted, flaked soybeans, are added, they are added in a range of between about 4-12 parts per 100 parts flour (Thompson at Col. 19, lines 31-37). Thompson also states that the **total protein** content of the finished bread product is between 9-11% by weight (Thompson at Col. 6, lines 11-12).

Thompson therefore teaches, at best, a total of 9-24 baker's percent soy ingredients in a dough formulation. From this concentration range, it can be calculated that the resulting bread product has between about 1.8 - 4.6% by weight soy protein.

In contrast, as described in Applicant's response dated May 19, 2003, the current invention utilizes a unique combination of soy protein sources and gluten to achieve the ability to vastly increase the soy protein content in the dough formula and the finished product beyond what was previously thought possible. For example, the finished bread product made from a dough composition shown on page 5 of the present application has a **soy protein content of 12.5% by weight, or about three times the soy protein content of the Thompson product.** Adding to this the protein from the flour and the added gluten results in a **total protein** content in the finished product in accordance with the present invention that is **substantially greater** than that taught or contemplated by Thompson.

As described in the Response dated May 19, 2003, in the bread composition shown on page 5 of the present application, the sources of soy protein are added at a level of 87.73 parts of soy protein (soy grits + soy flour) per 100 parts flour. Again, this is more than **three times the level of soy protein ingredients** described in the Thompson formulation. There is no motivation in Thompson to increase the level of soy protein, and in fact, Thompson specifically teaches against such an increase with the explicit statement in Thompson that "departures from the required ranges" of ingredients, such as soy protein, would seriously adversely affect the final product.

The Examiner also stated in the August 20, 2003 Office Action that "the specific combination of 'soya grits, soya flour and/or a protein extract, e.g. one obtained from soya beans and preferably in flour form, may be used in the preparation of bakery products according to the invention' disclosed by the GB '439 patent." However, the Examiner has not shown why a person of skill in the art would be motivated to increase the soy protein level of the dough or resulting bread, particularly when the teachings of Thompson explicitly state that varying the level of protein is undesirable.

Regarding the soy protein levels of the present invention, the Examiner further stated that "limitations from the specification are not read into the claims". It is respectfully noted that claims 32, 33, 41 and 42 as presented in the Response dated May 19, 2003 recite specific levels of soy protein provided by the claimed ingredient or dry mix of the present invention.

The Examiner also stated that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." It is respectfully noted that the Applicants' arguments are directed to the fact that there is no motivation to combine the references because the references, in fact, teach against the combination that the Examiner proposed.

Thompson is very clear about teaching against changing the levels of the gluten, protein source, alpha-cellulose flour and hydrophilic gums. One skilled in the art, reading Thompson (the Examiner's primary reference) would not be motivated to increase the soy protein level as in the present invention, without facing serious dough and bread quality issues. None of the other references provide a teaching that would motivate one of skill in the art to increase the level of soy protein by such an amount, particularly in light of the specific statement in Thompson against increasing the levels of any of the four critical ingredients. At best, the secondary references describe various sources of soy protein.

IV. Double Patenting Rejection

In the Office Action dated August 20, 2003, the Examiner rejected claims 31-52 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent Number 6,589,584.

Submitted herewith is a terminal disclaimer in compliance with 37 C.F.R. §1.132 (c) to overcome the obviousness-type double patenting rejection.

It is believed that this rejection has been overcome, and favorable reconsideration is respectfully requested.

Conclusion

Applicants respectfully submit that with the amendments and remarks presented herein, the claims are in condition for allowance, and allowance of these claims by the Examiner is respectfully requested.

Should the Examiner wish to discuss these claims further, or should an Examiner's Amendment be needed in order for the claims to proceed to allowance, the Examiner is invited to contact the undersigned attorney at the Examiner's earliest convenience. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
Cargill, Inc., through its attorneys,

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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8:

I hereby certify that this paper and any papers referred to herein are being sent via facsimile to Commissioner for Patents telephone number 703-872-9306 on October 8, 2003.

Brenda Gunderson:

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Signature